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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/810,763      | 03/26/2004  | Robert Roberts       | 04-5502             | 7651             |

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01/20/2006

Robert Roberts  
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EXAMINER

STACOVICI, STEFAN

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/810,763

Applicant(s)

ROBERTS, ROBERT

Examiner

Stefan Staicovici

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 62-89 and 96-101 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 62-70 and 82-89 is/are allowed.
- 6) ☒ Claim(s) 71-81, 96-101 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 23, 2005 has been entered.

#### ***Response to Amendment***

2. Applicant's amendment filed December 23, 2005 has been entered. Claims 62-89 and 96-101 are pending in the instant application.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 71-81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 71-73 recite the limitation "said colloidal size polytetrafluoroethylene resin particles" in lines 1-2. There is insufficient antecedent basis for this limitation in these claims. Claims 74-81 are rejected as dependent claims.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 71-81 and 96-101 are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts (US Patent No. 3,556,161).

Regarding claims 71-73, 96 and 101, Roberts ('161) teaches the claimed biaxially planar oriented structure including, colloidal size polytetrafluoroethylene resin particles having a particle size of 5-700 microns and a solvent that form a dispersion, forming a pressure-coalescible composition, filtering said composition to retain liquid of about 16% (approximately 17-20%) and form a cake, introducing a first, longitudinal stress and then and introducing a second, transversal stress (column 8, line 32) at approximately 90° to the original longitudinal direction (column 8, lines 39-42). Further, Roberts ('161) teaches a product having the same tensile strength in all directions (see col. 10, lines 5-20), hence the first, longitudinal and the second, transversal stress are also equal. Furthermore, Roberts ('161) teaches the resulting sheet structure contains particulate additive less than 25 microns in size (column 12, lines 25-27) and filler up to 95% by volume (see col. 1, lines 65-67).

In regard to claim 74-75, Roberts ('161) teaches said additive being additive is carbon black with 0.05 micron particle size.

Specifically regarding claims 76-78, Roberts ('161) teaches a filler content of up to 95% by volume (see col. 1, lines 65-67) having a dimension of at least 20 microns (see col. 2, lines 11-14), wherein said fillers contain a wide variety of inert particles (see col. 4, lines 1-50).

Specifically regarding claims 79-81, Roberts ('161) teaches polymeric resin additives (see col. 4, lines 35-27).

Regarding claims 96-101, Roberts ('161) teaches incorporating two or more types of a removable filler, *i.e.*, carbon black or polymeric resin, wherein the size of said filler determines the final porosity and wherein said filler is removed at high temperature sintering (see col. 3, line 63 through col. 4, line 50).

Regarding the product-by-process limitations of claims 71-81 and 96-101, it is noted that under MPEP 2113, "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

***Allowable Subject Matter***

7. Claims 62-70 and 82-89 allowed.

***Response to Arguments***

8. Applicant's remarks filed December 23, 2005 have been considered.

9. In response to Applicant's arguments regarding the product-by-process limitations of claims 71-81 and 96-101, it is noted that under MPEP 2113, "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Staicovici, Ph.D. whose telephone number is (571) 272-1208. The examiner can normally be reached on Monday-Friday 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni, can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Stefan Staicovici, PhD

A handwritten signature in black ink, appearing to read 'Stefan Staicovici', written in a cursive style.

Primary Examiner

1/14/06

AU 1732

January 14, 2006